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Regulatory
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Final Regulation Agency Background Document

Agency name	Board of Medicine, Department of Health Professions	
Virginia Administrative Code (VAC) citation	18 VAC 85-80	
Regulation title	Regulations Governing the Practice of Occupational Therapy	
Action title	Credential required for use of title, occupational therapy assistant	
Document preparation date	5/20/05	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The adoption of an “emergency” regulation by the Board of Medicine was required to comply with amendments to § 54.1-2956.1 and the second enactment clause in HB 309 passed by the 2004 General Assembly (Chapter 61 of the Acts of the Assembly). § 54.1-2956.1 mandates that the Board “*designate in regulation those credentialing organizations from which a person may obtain initial certification as an occupational therapy assistant in order to hold himself out to be or advertise that he is an occupational therapy assistant or use the designation "O.T.A." or any variation thereof.*”

The second enactment clause of Chapter 61 required the adoption of the regulation as an emergency in accordance with the Administrative Process Act, and the final regulation will replace the emergency regulation currently in effect. The current regulation requires a person who calls himself an occupational therapy assistant or uses the designation of O.T.A. or any derivation thereof to hold the credential for a Certified Occupational Therapy Assistant issued by the National Board for Certification in Occupational Therapy (NBCOT).

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On May 20, 2005, the Board of Medicine adopted a final regulation for 18VAC85-80-10 et seq. to establish the credential one must have to use the title of occupational therapy assistant.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400 -General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

...

6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...

In the Medical Practice Act (§ [54.1-2900 et seq.](#)), the Board of Medicine is mandated to set in regulation the credentialing organizations from which a person may obtain initial certification as an occupational therapy assistant in order to use the title or initials, O.T.A.

§ [54.1-2956.1](#). Powers of Board concerning occupational therapy.

The Board shall be empowered to take such actions as may be necessary to ensure the competence and integrity of any person who practices occupational therapy or claims to be an occupational therapist or who holds himself out to the public as an occupational therapist or who engages in the practice of occupational therapy, and to that end it may license practitioners as occupational therapists.

In addition, the Board shall designate in regulation those credentialing organizations from which a person may obtain initial certification as an occupational therapy assistant in order to hold himself out to be or advertise that he is an occupational therapy assistant or use the designation "O.T.A." or any variation thereof.

In addition, § 54.1-2956.5 requires initial certification from a credentialing organization approved in regulation in order for a person to use the title of occupational therapy assistant or use the designation, O.T. A.

§ 54.1-2956.5. Unlawful to practice occupational therapy without license; restriction of titles for occupational therapy assistants.

A. It shall be unlawful for any person not holding a current and valid license from the Board to practice occupational therapy or to claim to be an occupational therapist or to assume the title "Occupational Therapist," "Occupational Therapist, Licensed," "Licensed Occupational Therapist," or any similar term, or to use the designations "O.T." or "O.T.L." or any variation thereof. However, a person who has graduated from a duly accredited educational program in occupational therapy may practice with the title "Occupational Therapist, License Applicant" or "O.T.L.-Applicant" until he has taken and received the results of any examination required by the Board or until one year from the date of graduation, whichever occurs sooner.

B. In addition, no person shall hold himself out to be or advertise that he is an occupational therapy assistant or use the designation "O.T.A." or any variation thereof unless such person has obtained initial certification as an occupational therapy assistant from a credentialing organization approved in regulation by the Board.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the action is to comply with the statutory mandate in § 54.1-2956.1 which requires the Board to establish the credentialing body and initial certification required for a person to hold himself out to be an occupational therapy assistant or to use the designation O.T.A. or any derivation thereof. While the credential of OTA is not required for practice, its use does imply some education and training for practice and does provide measure of minimal competency and protection for the public. The intent of the legislation, implemented by this regulation, was to ensure that those persons who go by the protected title have a credential based on educational preparation, a practice component and an examination. The National Board on Certification in Occupational Therapy (NBCOT) is the only such credentialing body through which one can currently obtain initial certification.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

Section 61 is added to Part II to establish the Certified Occupational Therapy Assistant issued by the National Board for Certification in Occupational Therapy (NBCOT) as the credential that must be held by a person who calls himself an occupational therapy assistant or uses the designation of O.T.A. or any derivation thereof.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
 - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*

Advantages and disadvantages to the public:

There are no disadvantages to patients receiving occupational therapy services; they are better protected by more specific rules on the use of professional titles by unlicensed persons. Use of a title that implies certification and competency should be reserved for persons who have met the requirements and passed an examination entitled them to the credential. Although a COTA may use the title in conjunction with his name and practice, the licensed occupational therapist remains responsible for the services provided and for the treatment of the patient.

Advantages and disadvantages to the agency or the Commonwealth:

There are no advantages or disadvantages to the agency; the amended regulation does not impose a new responsibility on the Board and does not involve additional cost or staff time. In part, the amended regulation will clarify use of the protected titles, so the agency may benefit from fewer inquiries from applicants, licensees and employers.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

There were no changes made to the proposed regulation since its publication.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Proposed regulations were published on January 10, 2005 with a 60-day comment period ending on March 11, 2005. A public hearing on proposed regulations was held on January 21, 2005. There were no public comments submitted.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
n/a	61	n/a	<p>This new section provides that, effective one year from the effective date of the regulation, a person who holds himself out to be or advertises that he is an occupational therapy assistant or uses the designation "O.T.A." or any variation thereof must have obtained initial certification by the National Board on Certification in Occupational Therapy (NBCOT) as a certified occupational therapy assistant.</p> <p>The regulation and the law specify that only initial certification is required, an occupational therapy assistant is not required to maintain certification with NBCOT in order to continue to use the protected title. However, the designation of COTA is copyrighted by NBCOT and reserved for those who hold current certification. It is not required that one use the designation of COTA in order to call oneself an occupational therapy assistant.</p> <p>The third enactment for HB 309 provides "That, notwithstanding the effective date of this act, initial compliance with the provisions herein shall be as established by the Board of Medicine pursuant to its regulations." Therefore, the Board has provided in regulation a delayed effective date of one year to give persons who were not initially certified by NBCOT time to obtain the credential. In the meantime, the Act does not prevent a person from using the protected title, and thereafter, the Act does</p>

			not prevent a person from assisting with provision of OT services provided he does not use the protected title.
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Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

There is no impact of the proposed regulatory action on the institution of the family and family stability.